



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Soil and Water Conservation Board
Virginia Administrative Code (VAC) citation	4VAC50-60
Regulation title	Virginia Stormwater Management Program (VSMP) Permit Regulations
Action title	Amend the General Permit for Discharges of Stormwater from Construction Activities found in Part XIV of the Virginia Stormwater Management Permit Program Regulations and its associated definitions found in Part I of those Regulations.
Final agency action date	March 19, 2009
Document preparation date	March 24, 2009

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulatory action amends the General Permit for Discharges of Stormwater from Construction Activities (General Permit). The current 5-year General Permit is set to expire on June 30, 2009. This action is a revision of that current permit.

This action is authorized under the federal Clean Water Act (33 USC § 1251 et seq.) and the Virginia Stormwater Management Act (§10.1-603.1 et seq.). The key revisions to the permit include:

- 1) Updating and adding needed definitions such as “Act”, “best management practice (BMP)”, “common plan of development or sale”, “contiguous zone”, “control measure”, “discharge of a pollutant”, “general permit”, “hazardous substance”, “linear development project”, “qualified personnel”, “minor modification”, “qualified personnel”, “stormwater pollution prevention plan”, “Virginia Stormwater Management BMP Clearinghouse website”, “variance”, “final stabilization”, and “minimize”; PART I [section 10] and PART XIV [section 1100]. Also, it is explained in section 1100 that, for purposes of the General Permit, if a term is not defined in the permit, the VSMP regulations, or the Virginia Stormwater Management Act, it is to be given the meaning attributed to it in the Clean Water Act; PART XIV [section 1100].
- 2) Specifying that this General Permit, with the exception of section 4VAC50-60-1150, is effective on July 1, 2009; PART XIV [section 1120]. Section 4VAC50-60-1150 (and associated form DCR199-146) will be effective on May 13, 2009 or as soon as possible thereafter; PART XIV [section 1150]. This earlier effective date for that section was selected in order to allow existing permit coverage holders greater time to reapply for coverage under the new General Permit, as it will set a reapplication deadline of June 1, 2009 (existing regulations require such reapplication to be made 90 days prior to the expiration date of the existing General Permit). Such a time extension is within the Board’s authority and has been requested by the regulated community.
- 3) Adding a requirement that stormwater discharges from construction activities not cause or contribute to an excursion (i.e., a violation) above any applicable water quality standard, and that all control measures be employed in a manner that is protective of water quality standards; PART XIV [section 1170]. Discharges that the permit-issuing authority, in consultation with the State Water Control Board, determines cause, may reasonably be expected to cause, or contribute to a violation of water quality standards are not covered by the permit; PART XIV [section 1130].
- 4) Adding a statement that discharges to waters that have been identified as impaired on the 2008 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under the permit unless they are addressed consistent with the terms of the permit; PART XIV [sections 1130 and 1170]. The terms of the permit explain that discharges to waters identified as impaired on the 2008 305b/303d Water Quality Assessment Integrated Report must be addressed through construction site operators ensuring that their discharges do not cause or contribute to an excursion above any applicable water quality standard; PART XIV [section 1170].
- 5) Updates to the registration statement (i.e., application) for coverage under the general permit, including:
 - a. A statement that permit coverage becomes effective 15 business days following submission (postmarking) of a complete and accurate registration statement, unless an earlier notification of coverage is made by the Department; PART XIV [section 1150].

- b. As discussed in item #2 above, a requirement that current permit coverage holders reapply for coverage under this new General Permit by June 1, 2009. Further, provided that a complete and accurate registration statement is submitted by the June 1 reapplication date, the permit application (registration statement) fee will be waived for land disturbing activities for which the Department initially issued permit coverage on or after July 1, 2008; PART XIV [section 1150].
 - c. A specification that only one construction activity operator may receive coverage under a single registration statement; PART XIV [section 1150].
 - d. A requirement that each registration statement note direct discharges to any receiving water identified as impaired on the 2008 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL waste load allocation (WLA) has been established for stormwater discharges from a construction activity; PART XIV [section 1150].
 - e. A requirement that anticipated purchases of nutrient offsets be noted in the registration statement, and an inclusion of a note pointing out that a SWPPP must be prepared prior to the submission of a registration statement; PART XIV [section 1150].
- 6) Updates to the notice of termination, which ends permit coverage and becomes effective at midnight on the date that it is submitted (previously, it had been effective seven days after submission). The notice of termination must also include information related to nutrient offsets, as well as information related to participation in a regional stormwater management plan; PART XIV [section 1160].
- 7) Updates to the requirements for, and contents of, a Stormwater Pollution Prevention Plan (SWPPP) for the construction site, including:
 - a. A requirement for the SWPPP to be made available to the public. A copy of the SWPPP for the site is required to be posted online or available in hard copy, at the choice of the permit coverage holder. The website address for the SWPPP (or who can be contacted for access to a hard copy) must be posted near the entrance to the site. If access is allowed by hard copy, then access, if requested, must be permitted no less than once per month. Certain information precluded by law from disclosure, as well as information that may be contained in the SWPPP but that is not required by the terms of the General Permit, is not required to be released. This requirement applies only to new permit coverage holders, and not those having coverage before the effective date of this permit; PART XIV [section 1170].
 - b. A direct requirement that all operators implement an Erosion and Sediment Control plan for the site in accordance with the Erosion and Sediment Control Law and Regulations. Previously, the SWPPP had been required to address Erosion and Sediment Control through specific language in the permit; however, as a practical matter, operators simply followed their approved Erosion and Sediment Control plans. This change aligns the permit language with that practice; PART XIV [section 1170].
 - c. Clarification that water quality and quantity requirements must be met by the operator. Under the current permit, there has been confusion at times as to

- whether or not water quality measures are required on every site statewide. The draft proposed language makes it clear that water quality is required on all sites; PART XIV [section 1170].
- d. The addition of an option for inspections of the site to be conducted every seven days by the operator. The operator can still choose the current inspection schedule of every 14 days and within 48 hours following a runoff producing event if desired. It is additionally clarified that inspections do not need to be completed on those areas identified as finally stabilized; and inspection reports can contain an estimate of rainfall amounts at the site rather than the actual amount; PART XIV [section 1170].
 - e. Requirements that TMDL waste load allocations (WLA) made to construction activities be addressed through the implementation of control measures and strategies contained in the SWPPP that ensure consistency with the assumptions and requirements of the TMDL WLA that apply to the operator's discharge. Coverage holders that are subject to a TMDL WLA are instructed to consult with the state or federal TMDL authority to confirm that meeting permit requirements will be consistent with the approved TMDL; PART XIV [section 1170].
 - f. A clarification that amendments made to a SWPPP during construction must be signed, but don't need to include the certification statement contained in Section III K 4; PART XIV [section 1170].
 - g. A requirement that information related to participation in regional stormwater management plans and nutrient offsets be included in the SWPPP; PART XIV [section 1170].
- 8) General updates to the basic Conditions Applicable to All VSMP Permits section that appears in every VSMP permit; PART XIV [section 1170].
 - 9) The inclusion of new sections 4VAC50-60-1180, 1182, 1184, 1186, 1188, and 1190. Sections 1182-1190 are copies of the currently-effective Part II (water quality and quantity) of the stormwater regulations, with only minor amendments made where necessary to adapt the language to these new sections or to ensure continuity of program administration. This will prevent the revisions to Part II that are currently underway in a separate regulatory action from affecting persons holding coverage under this General Permit. A new general permit will be developed at a later time to incorporate the changes to Part II on a going-forward basis for new projects; PART XIV [sections 1180, 1182, 1184, 1186, 1188, and 1190].
 - 10) Updates to forms associated with the General Permit, including the registration statement (DCR 199-146), notice of termination (DCR 199-147), transfer form (DCR 199-191), and permit fee form (DCR 199-145).

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Virginia Soil and Water Conservation Board adopted this final regulation, which includes the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities and its associated regulations and incorporated forms, all found in the Virginia Stormwater Management Program (VSMP) Permit Regulations (4 VAC 50-60), at its March 19, 2009 meeting.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability. However, improvement of water quality does have positive public health and safety benefits that have an indirect impact on families.